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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,458	04/25/2000	David Vincent Zyzak	8026	9230

7590 03/07/2005

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EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/558,458	Applicant(s) ZYZAK ET AL.	
	Examiner Leslie Wong	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12-14 and 21-28 is/are pending in the application.
 4a) Of the above claim(s) 21-28 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-9 and 12-14 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 22, 2004 has been entered.

Newly submitted claims 21-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted claims 21-28 are directed to a process of making. Claims 1-9 and 12-14 are directed to the product made. The inventions are distinct as the product as claimed can be made by another and materially different process.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoltz in view of Fennema and Patel et al for the reasons set forth in rejecting the claims in the last Office action.

Stoltz discloses a flavor enhancer formulation comprising oil and a flavor (see entire patent, especially column 10, lines 35-56).

The claims differ as to the use of specific flavor enhancers and the use of silicon dioxide.

All of the claimed flavor enhancers are notoriously well-known in the art and are used merely for their art-recognized function. Fennema discloses nucleotide flavor enhancers including MSG, disodium guanylate, and disodium inosinate (see pages 734, 735, and 816).

Patel et al disclose a flavor composition comprising silicon dioxide, where the silicon dioxide is used as a thickener (see entire patent, especially the abstract and claim 3).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use any of the claimed flavor enhancers and silicon dioxide as taught by Fennema and Patel et al in that of Stoltz because the use of flavor enhancers and the use of silicon dioxide is conventional in the art.

It is also noted that flavors may be delivered in different forms such as liquid and particulate where both are conventional in the art as evidenced by the available flavorants on any supermarket shelf.

Applicant's arguments filed December 22, 2004 have been fully considered but they are not persuasive.

Applicant argues that the claimed invention is directed to how to deliver water-soluble enhancers to foods via an oil phase.

Applicant's claims are directed to a product. Applicant does not claim a delivery process.

Stoltz clearly teaches the use of a flavor enhancer formulation comprising oil and a flavor dispersed through the oil as stated above. Stoltz does not exclude water-soluble flavors. In column 2, lines 54-58, Stoltz teaches flavor in general.

Fennema teaches well-known flavor enhancers and Patel is cited to teach the conventional use of silicon dioxide.

It is not seen where Applicant's claims differ from that which is obvious to the prior art.

The recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. It is pointed out that the claims are product claims and not process claims. The product must stand on its own invention, independently of the process of producing same. See *In re Marosi*, 218 USPQ 195; *In re Thorpe*, 227 USPQ 964; *Ex parte Jungfer*, 18 USPQ 2nd 1976.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination

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of known components which produces expected results, see *In re Kerkhoven* 205 USPQ 1069 and *In re Gershon* 152 USPQ 602.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability. No claim is allowed.

This is a continuation of applicant's earlier Application No. 09/558458. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

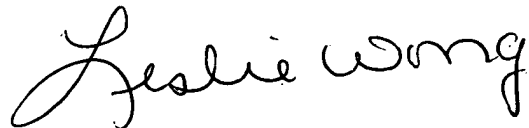
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script that reads "Leslie Wong".

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 3, 2005